IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29/07/2003

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THE HONOURABLE MR.JUSTICE M. CHOCKALINGAM

CRL. APPEAL NO.68 OF 1996

Thoppiliya Alli Raja .. Appellant

-Vs-

State
rep. By Sub Inspector of Police
Valavandhinadu Police Station
Chenthamangalam Post
Salem District
(Cr. No.53/94) .. Respondent

This criminal appeal is preferred under Section 374(2) of Cr.P.C against the judgment in SC No.230 of 1995 dated 19.1.1996 on the file of the learned Principal Sessions Judge, Salem.

!For Appellant : Mr.Rajarathinam
for Mrs. Pushpa Sathyanarayana

^For Respondent : Mr.O.Srinath,
Govt. Advocate (Crl. Side)

:JUDGMENT

The first accused in a case of murder, who stood charged along with two others ranked as A2 and A3, has brought forth this appeal challenging the conviction and sentence imposed by the learned Principal Sessions Judge, Salem, wherein the accused No.1 was sentenced to undergo 5 years R.I under Section 304(2) I.P.C, while the other accused Nos.2 and 3, who were found guilty under Section 324 IPC and sentenced to pay a fine of Rs.500/- each, have not preferred any appeal.

2. The short facts necessary for the disposal of this appeal can be stated thus:

a) The deceased Sandakuppan was living in a Pekkattu Pudur. P.W.2 Chinnasamy and Venkatachalam are his sons. Accused Nos.1 and 2 were residing in the same village. A3 is the father of A1 and A2. The deceased and A3 were co-brothers. There was a dispute between the parties in irrigating the lands.

b) On 9.5.1994, there was a wordy quarrel regarding taking water. A1 wanted to have the entire water and so saying he was diverting the same to his field. The deceased has stated that it was already decided in the Panchayat,

and hence, the accused was not right in diverting the water. At about 6.00 p.m., P.W.1 came there and pacified them. At that time A1 and A2 came over there. A1 took a stone and attached the deceased in the right front. A2 and A3 had also pelted stones on the deceased, which felled on the right shoulder of the deceased. This was witnessed by P.W.2 and his brother Venkatachalam, who was standing 30 feet away in the same field. They came to the rescue of the deceased. On seeking this, A1 went to his house, brought Koduval and attacked the deceased on both sides of the forehead, both sides of the ribs and right thigh. A1 throw a stone on P.W.2 which fell on his right leg. Again A2 throw a stone, which fell on the left wrist of Venkatachalam. When they raised alarm, all the accused fled away.

c) P.W.2 and his brother had hide themselves in the forest for the entire night, went to the scene of occurrence on the nest day morning and found his father dead. On 10.5.1994 at 2.00 p.m. The Police came and sent P.W.2 and his brother to Rasipuram Hospital. At that time, P.W.2 came to know that P.W.1 had given a comp laint to the police. P.w.10, the Sub Inspector of Police, Mr.Rajamanikan attached to Vazhavandhi Naadu Police Station, received a complaint Ex.P.12 from P.W.1 on 10.05.1994 at about 11.30 a.m. On the strength of the same, he registered a case in Crime No.53/1994 under Sections 302 and 324 IPC. Ex.P.13 is the printed F.I.R., which was despatched to the concerned Court. P.W.11 Gunaseelan Inspector of Police of Senthamangalam Circle on receipt of the telephone message, went to the site of occurrence and received F.I.R from the Sub Inspector of Police. He took up investigation and he made observation in the presence of the witnesses. Ex.P.5 is the observation mahazar and rough sketch was marked as Ex.P.14 . He examined the witnesses and recorded their statements. He seized MO1 series-Stones, MO3 Blood stained earth, MO4 sample earth under Ex.P.6 Mahazar and the same was attested by P.W6 and one more witness. After making inquest, he prepared a report in the presence of the witnesses. He sent the body for postmortem through PW9 Manilal Constable. PW3 Dr.Manoharan, on receipt of the requisition, conducted post-mortem on 11.5.1994 and has given post-mortem certificate under Ex.P.2, wherein the following external injuries are found:

1. An abrasion on the left side of back of scalp 3 x 2 cm with blood clots.
2. A contusion on front of right shoulder black in colour 3 x 2 cm.
3. A contusion in front of right upper arm 3 x 2 cm.
4. A cut injury above left eye brows 3 x 1 cm x bone deep
5. A contusion on left collar bone 2 x 2 cm
6. A cut injury 3 x 2 x 1 over left side chest 4 cm below left nipple.
7. A contusion 3 x 2 cm right side of chest 3 cms below and behind right nipple
8. A piercing cut injury on the inner side of right thigh 4 x 2 x bone deep with blood clots.

The Doctor has opined that the deceased would appear to have died off 36-40 hours prior to autopsy due to shock and haemorrhage, due to multiple injuries. The injury Nos.4,6 and 8 could have been caused by a sharp koduval and the contusions could have been caused by the stones MO1 series. Injury No.8 is sufficient to cause death.

d) P.W.4 Dr. Madhavan examined P.W.2. Ex.P.3 is the accident register copy and the injuries are simple in nature. P.w.7 is the Photographer, who took MO5 series 2 photographs at the scene of occurrence and the negatives were MO6 series. On requisition, MOs were sent for chemical

analysis. The forensic and serologist report are Ex.P.9 and Ex.P.10. On completion of the investigation, the Investigating Officer has laid a charge sheet.

3. In order to prove the charges levelled against the accused, the prosecution examined 12 witnesses and 15 exhibits and 7 MOs. On completion of the evidence of the prosecution, the accused were questioned under Section 313 of Cr.P.C. as to the incriminating circumstances found in the evidence of the prosecution witnesses. The photograph was marked as Ex.D.1. No defence witnesses were marked. On consideration of the rival submissions made and scrutiny of the materials available, the trial court found A1 guilty under Section 304(ii) IPC, while A2 and A3 were found guilty under Section 324 IPC and A1 was sentenced to undergo imprisonment as stated above. Hence, A1 has brought forth this appeal.

4. Arguing for the appellant, the learned counsel has made the following submissions:

The prosecution has relied on the evidence of Pws.1, 2 and 5, but PWs.1 and 5 have turned hostile. What was available to the prosecution was the uncorroborated testimony of PW2. The lower court has given undue weight and relied on the evidence of PW2, which was self discrepant and inconsistent. P.W.2, who is the son of the deceased, did not chose to go to the police station and lodge a complaint. But, it was P.W.1, who went to the Police Station and gave a complaint on the next day, i.e. on 10.5.1994, while the occurrence has taken place on the evening on 9.5.1994, and thus, there was a delay and the same remained unexplained by the prosecution. The medical evidence has not supported the ocular evidence adduced by the prosecution. According to the prosecution, the occurrence has taken place in the open field and the body was kept there till next morning. According to PW3, who conducted post-mortem, there was all possibility of changing symptoms in the dead body in its external appearance, if it was kept in an open field, but no symptoms were found at the time of examination. A photograph was marked on the side of the defence, wherein the body was found abutting the wall, which casts a doubt whether the occurrence has taken place as put forth by the prosecution. According to PW2 he hide himself in the forest and came to the occurrence place only on the next day morning and found his father dead, which is opposed to the ordinary course of human conduct. According to the prosecution, the mother and sister of the deceased were present at the time of occurrence. But no one was examined, and thus, the prosecution suffered with lack of evidence. Hence, the trial court should have acquitted the accused of the charges levelled against him. The accused No.1 is entitled for an acquittal by this Court.

5. Opposing strongly all the contentions put forth by the appellant's side, the learned Government Advocate (Criminal side) would submit that there was no delay in lodging complaint. The occurrence has taken place in a hill area. The fact that the police station is situated at about 35 kms. away from the place of occurrence is not disputed by the other side. Under the stated circumstances, the case came to be registered in the next morning. Hence, it cannot be said that there was a delay. It is true that PWs.1 and 5 have turned hostile, but the same is in no way affect the case of the prosecution, since PW2, who according to the prosecution was injured at the time of occurrence, has given a cogent evidence about the whole incident. His evidence has been fully supported by the medical evidence, wherein the time

and the manner in which the deceased died have been clearly mentioned. Hence, it cannot be stated that it was not supported the prosecution case. It is true that the mother and sister of the deceased were not examined. But that cannot be a reason to reject the case of the prosecution, while the other witnesses were available for the prosecution in that regard, though two of them have turned hostile. Nothing could be commented on the complaint given by P.W.1, though not by P.W.2. P.W.1 has set the law in motion, and thus, the case came to be registered. Under the stated circumstances, it cannot cast any doubt to the prosecution case. The lower court was perfectly correct in recording conviction against the accused No.1 under Section 304(ii) IPC. Hence, the judgment of the lower court has got to be affirmed.

6. This Court paid its full attention on the rival submissions made and had a close scrutiny of the materials available, which lead an irresistible conclusion that there is no merit in this appeal.

7. The gist of the prosecution case as seen above was that at the time of occurrence, i.e. on 9.5.1994 at about 6.00 p.m. there was a wordy quarrel regarding taking water between the accused and the deceased. The accused took a stone and attacked the deceased. Not satisfied with the same, A1 went to his house and brought Koduval and attacked the deceased indiscriminately. The eyewitnesses, except PW2, have turned hostile. It is also true that PW2 was a close relative of the deceased. It is a well settled law that the evidence of the witnesses, though a close relative, cannot be rejected only on the ground of relationship. If the evidence relied on by the prosecution inspires the confidence of the Court and the same is cogent, acceptable and trustworthy, it should be accepted. The trial court has rightly pointed out and discussed the evidence of P.W.2 elaborately and has adduced proper reasons for accepting the said evidence. P.W.2 has given a graphic narration of the entire incident that has taken place, and hence, his evidence has got to be accepted. PWs.1 and 5 have turned hostile, but the same has in no way affected the case of the prosecution. At the time of investigation, the Investigating Officer conducted inquest and sent the body for autopsy, which was done by P.W.3 Doctor. P. W.3 has given a post-mortem certificate. He opined that the injury No.8 would be sufficient to cause death in the ordinary course of things. Hence, this part of the evidence through the post-mortem Doctor has fully corroborated the evidence of P.W.2, who has given a graphic narration about the entire incident. Hence, it cannot be said that the ocular evidence was not corroborated by the medical evidence.

8. The contention of the appellant's side that there was delay in lodging complaint has got to be discountenanced for the simple reason that the occurrence has taken place in a hill area that too at about 6 .00 p.m. and the police station is situated at about 35 kms. away from the place of occurrence. Hence, the complaint was given on the next day morning. The appellant's side is unable to show either the delay so occurred would cause prejudice to the case of the appellant or any embellishment is made in the case of the prosecution. The non examination of the mother and sister of the deceased would not in any way affect the case of the prosecution, since PW2 has given a cogent and acceptable evidence. The appellant's side has relied on Ex.D.1, photograph, wherein it was found that the dead body was found abutting the wall . But according to the prosecution, it was found in the open field. The trial court has pointed out that P.W.7 photographer has taken two photographs. No explanation was tendered as to how Ex.D.1 came into

existence. Hence, no evidentiary value could be attached to the said photograph. Thus, the Court is unable to notice any merit in the appeal to interfere in the judgment of the trial court.

9. Considering the facts and circumstances of the case, the Court is of the view that due to sudden provocation, the accused attacked the deceased. Hence, the sentence awarded by the trial court under Section 304(ii) IPC to accused No.1 has got to be reduced to four years RI, which would meet the ends of justice. Therefore, the sentence of five years RI under Section 304(ii) IPC imposed by the trial court to the accused No.1 is reduced to four years RI. In other respect, the judgment of the trial court is confirmed. With the above modification, this criminal appeal is dismissed. The Sessions Judge shall take steps to commit the accused No.1 to prison, if he is on bail, to undergo the remaining period of sentence.

Index : Yes
Intenet : Yes
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To
1. The Judicial Magistrate II, Namakkal
2. The Judicial Magistrate II, Namakkal
through Chief Judicial Magistrate, Salem
3. The Principal Sessions Judge, Salem
4. The Superintendent, Central Prison, Coimbatore
5. The Public Prosecutor, High Court, Madras
6. The Dy. Inspector General of Police, Chennai-4
7. Mr.O.Srinath, Govt.Advocate(Crl. Side)
High Court, Chennai
8.The Sub Inspector of Police,Valavandhinadu Police Station,
Chenthamangalam Post, Salem District